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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,599	01/23/2002	Scott C. Harris	Visual-Dbase	6412
23844	7590	09/21/2005	EXAMINER	
SCOTT C HARRIS P O BOX 927649 SAN DIEGO, CA 92192			HALIM, SAHERA	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/683,599	HARRIS, SCOTT C.	
	Examiner Sahera Halim	Art Unit 2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on May 23, 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

1. This Office Action is in response to communication filed on May 23, 2005.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crill et al. U.S. Pat. No. 6,445,822 (hereinafter Crill).

4. Reference to claim 1, Crill teaches a system, comprising:

a client which allows entry of image information (col. 5, line 10 – 30 and Fig. 1, numeral 102, Crill teaches in step 102 creating search images that the user wants to search), and

a server, including a database associated with the server, said server connected to said client to receive said image information (col. 5, lines 34 – 37, Crill teaches candidate images maybe located on one or more centralized or distributed application servers, database servers, website servers or other devices) and using said image information to search said database associated with the server which meet criteria specified in said image information (col. 5, lines 9 – 30 and Fig. 1 and 2, Crill teaches

comparing reference image with candidate image) and forming search results based on said image information (Fig. 1, numeral 108 and col. 5, lines 22 – 25, 108 provides to the user the results of comparison and the degree of matching and correlation).

Although the system disclosed by Crill shows substantial features of the claimed invention (discussed above), it fails to explicitly teach that the sever for items to be purchased. Nonetheless these limitations are well known in the art and would have been an obvious modification of the system disclosed by Crill as evidenced by Crill's background. Crill teaches in the background of his invention that companies maintain or keep databases of images relating to the manufacture, assembly, and maintenance of products the company develops and sells (col. 1, line 26 – 37). Given the teachings of Crill, a person having ordinary skill in the art at the time of the invention would have readily recognized the desirability and advantages of modifying by enabling the server to include items to be purchased in order to expand the system's usability.

5. Regarding 10, Crill teaches a method, comprising:

entering image information to a client on the network (col. 5, line 10 – 30 and Fig. 1, numeral 102, Crill teaches in step 102 creating search images that the user wants to search); and

sending said image information to a server on said network and using said image information to search database information on said server on said network (col. 5, lines 34 – 37, Crill teaches candidate images maybe located on one or more centralized or distributed application servers, database servers, website servers or other

devices and see col. 5, lines 9 – 30 and Fig. 1 and 2, where Crill teaches comparing reference image with candidate image)); and returning search results from said server to said client (Fig. 1, numeral 108 and col. 5, lines 22 – 25, 108 provides to the user the results of comparison and the degree of matching and correlation). Nonetheless, Crill fails to teach returning search results from said server to said client included price information associated with items in said search results. However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to include price information because it would allow the system disclosed by Crill to be used in an e-commerce environment.

6. Reference to claim 2, Crill teaches wherein said client allows forming initial image information, and subsequently setting parameters associated with said initial image information using a user interface (see col.6, line 56 – 30).

7. As to claims 3 and 13, Crill teaches wherein one of said parameters associated with said image information includes exclusion information to exclude from said search results, and said server forms said search results which do not include said exclusion information (see col.7, line 17 – 31, when cropping the image, it is excluding).

8. Regarding claims 4 and 12, Crill teaches, wherein one of said parameters includes a selection of a more important image portion, which is more important than

other image portions, and said client forms search results which are weighted according to said more important image portion (see. Col. 18, line 63 – col. 19, line 11).

9. Regarding claims 5 and 15, Crill wherein one of said parameters includes an image size, and said client forms search results which only include results having said specified image size (col. 7, line 17 – 31).

10. As to claim 6, Crill teaches a system as in claim 2, wherein said client includes a scanner to allow entry of said initial image information (col. 6, line 56 – 66).

11. Reference to claim 7, Crill teaches a system as in claim 2, wherein said client includes a tablet to allow entry of said initial image information (col. 6, line 56 – 66).

12. As to claim 8, Crill teaches a system as in claim 2, wherein one of said parameters associated with said image information includes a color, and said server operates to find items based on said color information in addition to said image information (col. 7, line 1 –16)

13. Regarding claim 9, Crill does not explicitly teach wherein said server is associated with an electronic commerce site, and said search results include price information for items associated with said search results. However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to include associating the server with an electronic commerce site and include price information

for items associated with search results because it would allow the system disclosed by Crill to be used in an e-commerce environment.

14. Claim 11, has similar limitations as to claim 2, therefore, it is rejected under the same rational of claim 2.

15. As to claim 14, Crill discloses a method as in claim 13, wherein said exclusion information includes image information (see col.7, line 17 – 31).

16. Reference to claim 16, Crill teaches a method as in claim 11, further comprising displaying said image information as part of a graphical user interface, and using said graphical user interface to enter said parameters (Fig. 2 and col. 6, line 56 – col. 7, line 16).

17. Claim 17 has similar limitations as to claims 1 and 10 and although claims 1 and 10 are not identical of claim 17, claim 17 does not further teach or differ over the limitations taught by claims 1 and 10. Therefore, claim 17 is rejected under the same rational as claims 1 and 10.

18. Regarding claim 18, Crill teaches wherein searching image information includes an image, and additional information about the searching, in addition to said image (col. 6, line 56 – 31).

19. Claim 19 has the same limitations as claims 3 and 13, thus it is rejected under the same rational.

20. Claim 20 has the same limitations as claim 8; therefore, it is rejected under the same rational.

Response to Arguments

21. Applicant's arguments filed May 23, 2005 have been fully considered but they are not persuasive.

22. The applicant argues that Crill does not teach "items to be purchased on that server". In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

23. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the example on page 3 of the Arguments) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

24. In reference to claim 3, the applicant argues that exclusion of information and cropping is different. The examiner disagrees. The applicant correctly recognized that cropping changes the image and so does excluding information from a search (especially when the search is in the form of an image). Therefore, cropping an image or excluding information from an image is the same.

25. In response to applicant's argument in reference to claim 2, the examiner asserts Crill teaches the limitations of claim 4. Crill states, "For example, suppose that a user is only interested in candidate images that have a certain structure, texture, shape, color, etc. In the top right or top right corner of the candidate images. By selectively blocking out selected or certain cells or areas of the mask 628, ie., making the selected cells have no or little transparency or transmissibility, only structure, texture, shape, color, etc. in the appropriate or desired areas only the areas of interest of the candidate image(s) are compared to the reference image(s)..". The reference does not use the phrase "important portion". It uses "area of interest". Referring to the applicant's bicycle

example which states "if the user is looking for a bicycle, they may specify the bicycle as being more important than other background portions". This is exactly what the reference teaches, if the user is looking for a bicycle, they may block out the background area, leaving the bicycle to be the area of interest.

26. In reference to claim 9, it is argued that Crill fails to teach the limitations of this claim, the examiner agrees that Grill fails to teach the limitations of sever is associate with an electronic commerce site, and said search results include price information for items associated with said search results as stated in the First Office Action. However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to include associating the server with an electronic commerce site and include price information for items associated with search results because it would allow the system disclosed by Crill to be used in an e-commerce environment. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

27. The applicant argues that Crill fails to teach limitations of claim 10. The examiner disagrees. Crill teaches a method, comprising, entering image information to a client on the network (col. 5, line 10 – 30 and Fig. 1, numeral 102, Crill teaches in step 102

creating search images that the user wants to search); and sending said image information to a server on said network and using said image information to search database information on said server on said network (col. 5, lines 34 – 37, Crill teaches candidate images maybe located on one or more centralized or distributed application servers, database servers, website servers or other devices and see col. 5, lines 9 – 30 and Fig. 1 and 2, where Crill teaches comparing reference image with candidate image)); and returning search results from said server to said client (Fig. 1, numeral 108 and col. 5, lines 22 – 25, 108 provides to the user the results of comparison and the degree of matching and correlation). As admitted on the previous office action by the examiner, Crill fails to teach returning search results from said server to said client included price information associated with items in said search results. However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to include price information because it would allow the system disclosed by Crill to be used in an e-commerce environment.

28. In response to applicant's argument in reference to claim 17 that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

29. In reference to claim 19, the applicant argues the same limitation of claim 3.

Please refer to the respond for claim 3 above.

Conclusion

30. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Sahera Halim
Patent Examiner
AU. 2157

September 19, 2004


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